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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 9th September 1958

S.O. 1882.—Whereas the election of Shri Biren Roy as a member of the Lok Sabha from the Calcutta South-West Constituency of that Sabha has been called in question by an election petition duly presented under Part VI of the representation of the People Act, 1951 (43 of 1951), by Shri Kalipada Banerjee residing at 9A, Mahim Halder Street, Calcutta (West Bengal) and Shri Anil Kumar Sadhukhan residing at 30, Surendra Nath Banerjee Road, Calcutta (West Bengal);

And, whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, CALCUTTA (WEST BENGAL)

PRESENT:

Shri Bijayesh Mukherji, M.A., LL.B.,
Higher Judicial Service,
Additional District and Sessions Judge,
24-Parganas (Alipore)

Wednesday, the 27th August, 1958

ELECTION PETITION No. 439 OF 1957

Shri Kalipada Banerjee and another *Petitioner.*

Versus

Shri Nirmal Chandra Das and other *Substituted Respondents.*

This election petition coming on for final hearing on April 25, 28, May 5, 6, 7, 9, 10, 12, 17, August 5, 6, 7, 8, 16, and 18,—1958.

IN THE PRESENCE OF—

- (1) Shri A. C. Mitra, Senior Standing Counsel,
- (2) Shri M. Hazra,
- (3) Shri J. K. Mukherjee,
- (4) Shri D. Gupta, and
- (5) Shri A. K. Dutt.

..... for the petitioners.

and

- (1) Shri Badarikanath Bhattacharyya, Government Pleader,
- and

- (2) Shri B. Basu

for the sole respondent Biren Roy till
May 10, 1958;

and

- (1) Shri B. Basu

for the respondents Brajagopal Das
and Devaprasad Roy, substituted
in place of the sole respondent Biren
Roy under section 116 of the Re-
presentation of the People Act,
1951;

- (2) Shri H. K. Chatterjee

for the respondent Nirmal Chandra
Das, similarly substituted;

Shri B. Sen

for the respondents Sudhabindu Pand-
yopadhyaya and three others,
similarly substituted;

and having stood for consideration to this day, the Tribunal delivered the following judgment:—

This is a case seeking avoidance of a Parliamentary election for disqualification of the returned candidate, Shri Biren Roy, hereinafter referred to as "Shri Roy".

2. Indeed, the fortunes of the instant "purely statutory proceeding" hang on the determination of the sole question as to whether or not Shri Roy had by any person in trust for him or for his benefit or on his account any share or interest on the date of his election, namely, March 29, 1957, in a contract by the Indo German Trade Centre for the supply to the Central Government of goods, to wit, automatic vote-recording equipment for the Rajya Sabha and the Lok Sabha. This contract can be put another way in the words of the statute: a contract for the execution of a work undertaken by the Central Government, to wit, installation of the automatic vote-recording device for the said two Houses of Parliament. If the whole of the materials I have had put before me points to an affirmative answer to the sole question for decision, section 7(d) of the Representation of the People Act 1951 (hereinafter referred to, for brevity's sake, as "the Act"), read with Article 102(1)(e) of the Constitution, comes between Shri Roy and his success at the polls by a majority of 12,538 votes over his nearest rival, Shri Ashim Krishna Dutt. He is then "disqualified for being chosen as, and for being, a member of either House of Parliament", here the Lok Sabha. If, however, the whole of the materials point to an answer just the other way about, namely, that Shri Roy has no share or interest in the contract in terms of section 7(d) of the Act, let nothing happen to him. He is then not caught by the provisions just noticed, specifying disqualifications for membership of Parliament.

3. This is "the only point" the learned Senior Standing Counsel, arguing the case for the petitions, invites me to decide, submitting at the same time that "all other points are given up." This point forms part of the third issue which runs—

"Issue No. 3.—Is the answering respondent Biren Roy disqualified for being chosen as a member of the Lok Sabha because of his connection with a firm under the name and style of Indo-German Trade Centre and also because of a lease with the Central Government for premises No. 3 Suren Roy Road, Behala, entered into by one B. K. Mukherjee as the Benamdar of the said answering respondent Biren Roy?"

4. The second part of the third issue just read eliminates itself. No evidence has been led of the lease with the Central Government of No. 3 Sauren Roy Road. And this point has been "given up" too not only at and during the trial but also in course of arguments. So, denuded of this, the third issue reads—

"Issue No. 3.—Is the answering respondent Biren Roy disqualified for being chosen as a member of the Lok Sabha because of his connection with a firm under the name and style of Indo-German Trade Centre?"

5. Even so, this truncated Issue No. 3 needs adjusting a little more. Shri Roy is no longer an answering respondent. On May 24, 1958, he files a petition informing this Tribunal that he does not intend to oppose the instant election petition: *vide* Order No. 57. On May 28 following the said petition is heard: *vide* Order No. 60. And on June 2, 1958, it is ordered that the provisions of section 116 of the Act be set in motion: *vide* Order No. 61. So, the expression "answering respondent", as it occurs in the issue, does not fit in with the development which took place much after the issue had been framed. Let it be deemed as not being there. I shall revert to this truncated and adjusted Issue No. 3 after I have set out the facts and noticed the vicissitudes through which this election case has passed.

6. The present election petition under section 81 of the Act, is at the instance of two electors: Shri Kalipada Banerjee and Shri Anilkumar Sadhukhan. It calls in question the election of Shri Roy to the House of the People from the Calcutta South-West Parliamentary Constituency. Both the petitioners, Banerjee and Sadhukhan, are persons who were entitled to vote at the last general elections from the constituency just named, as will be evident from the certified copies of the relative electoral rolls, Exts. 31/1 and 31. And to this election the instant election petition relates. Presented to the Election Commission on May 3, 1957, by Shri Asoke Krishna Dutt, "duly authorised by the petitioners" to do so, it was published in the Official Gazette, which means the Gazette of India, under section 2(3)(c) of the Act. A copy thereof was served on each of the then three respondents—(1) Shri Biren Roy, (2) Shri Ashim Krishna Dutt, and (3) Shri Rajani Mukherjee. All this done, it was referred to this Tribunal early in July, 1957, for trial under section 86 of the Act.

7. The averment in paragraph 6 of the election petition calls attention. Shri Roy secured 94,944 votes, Shri Ashim Krishna Dutt, 82,406—so many as 12,538 less—and Shri Rajani Mukherjee 11,297. This statement of fact is "substantially correct", according to paragraph 9 of Shri Roy's written statement. But the petitioners Banerjee and Sadhukhan do not pray the seat for Shri Dutt or Shri Mukherjee. They claim only two substantial reliefs. First: Declare the election of Shri Roy void. Second: If necessary, declare the said election to be wholly void. The prayers contained in paragraph 11 and the averment in paragraph 10 of the election petition are to that end. But such prayers and averments betray more attention to the old section 81 of the Act than to the new one by which the old one has been substituted: *vide* section 46 of the Central Act 27 of 1956. In section 81, as it now stands, the expression "wholly void" is not simply there. It permits a petitioner to claim two reliefs only—(1) a declaration that the election of all or any of the returned candidates is void, and (2) a further declaration praying the seat for himself or any other candidate. This brings in the question of parties to the petition, which section 82 provides for. Under clause (a) thereof, the returned candidate, Shri Roy, is the only party to be impleaded because the petitioners do not pray the seat for any candidate. All they pray is that the election of Shri Roy be declared void. In that view, at the earlier stages the names of the two other respondents, Shri Dutt and Shri Mukherjee, were struck off, leaving Shri Roy, the sole respondent: *vide* Order No. 11 dated July 25, 1957.

8. In having done what the petitioners did by joining all the contesting candidates, there was, however, no question of non-compliance with the provision of section 82. The said provisions were complied with. On the basis of the declaration claimed that the election of the returned candidate Shri Roy is void, the petitioners shall join him alone as respondent. So they did. Thus the compliance is there. And they did something more. They joined all the contesting candidates a fact not to be equated with non-compliance of section 82. That was, indeed, unnecessary. And what was unnecessary was eliminated. In fine, the election petition has nothing in it short of the requirements of section 82 of the Act. It had something in it in excess of the requirements. And that excess has been excised. Not that this has been the subject of any argument at the Bar. None at all from either side, though there is an issue to that end: Issue No. 2. But that I owe it to myself to record why I have not called in aid sub-section (3) of section 90 of the Act.

9. It is hardly necessary, in view of the developments noticed in paragraph 3 *supra* to set out all the allegations traversed in the election petition. And many of these allegations are models of what the allegations in a solemn election petition should not be. Fantastic in particular is the allegation attributing to Shri Roy and his men a statement

before the Mohammedan electors that, should the Communist and other Leftist candidates including Shri Roy come into power, one Mohammad Ismail, who was contesting the West Bengal Chief Minister, would be the Chief Minister of West Bengal and the State of West Bengal would become part of Pakistan. No less fantastic is the allegation similarly attributing to Shri Roy and his men a statement that a vote for Shri Ashim Krishna Dutt and the Congress candidates would mean that the Pakistanis would be driven out from Kashmir: *vide* paragraph 8A (iii) (a) of the election petition. It is difficult even for credulity to swallow such allegations. Be that as it may, suffice it to notice in brief only the allegation touching the disqualification of Shri Roy.

10. The relevant paragraph of the election petition is paragraph 8B with its subparagraphs (a), (b), (c) and (e). The substance of the allegation contained herein is that in or about 1950 Shri Roy started a business under the name and style Indo-German Trade and Economic Information Centre "as the sole proprietor and or partner thereof". I digress here for a moment and observe that the unthoughtfulness apart of the expression "and/or", which Lord Simon, L. C., stigmatized as a "bastard conjunction", it shows that the petitioners do not know their own mind. Be that as it may, to resume the narrative, some time thereafter Indo-German Trade Centre replaced Indo-German Trade and Economic Information Centre, Shri Roy acting all along as the director. "In any event, at all material times" Shri Roy "had an interest or share in" this business. In 1957 the Central Government entered into a contract with the Indo-German Trade Centre for installation of automatic vote-recording equipment in both the Houses of Parliament; the Lok Sabha and the Rajya Sabha. Hence the disqualification.

11. Shri Roy answers the allegations in paragraph 18-22 of his written statement. He denies that he has or had ever any share or interest in the business. An information centre, he avers, opened by a group of persons for information touching India and Germany, pressed him into service as an advising director because of his previous experience of Germany. Even so, he states, "the term 'director' was a misnomer". "Neither a company nor a profiteering concern", he states, it came to an end in or about 1953. About Indo-German Trade Centre, the plea is that that is the business of his brother-in-law, B. K. Mukherjee of the famous Dewan family of Rajasthan, who is the absolute owner and proprietor thereof. Shri Roy having had never any manner of connection therewith. Shri Mukherjee, the averment continues, "submitted tender of contract for automatic vote-recording" in both the Houses of Parliament in 1955/56, and, having got the contract, executed the same. The allegation that Shri Roy got the contract in 1957, the averment concludes, "is totally untrue, false and without any foundation".

12. The part of the third issue with which I am now concerned arises because of this material proposition of fact about Shri Roy and the Indo-German Trade Centre, affirmed by the petitioners and denied by the respondent, as Shri Roy then was. On this issue and seven others, the parties went to trial which opened on April 25, 1958, with the apprehension of coming to shipwreck any day for absence of Parliamentary papers called for by this Tribunal from the Lok Sabha and the Rajya Sabha by Order No. 30 dated April 9, 1958. It could not have been taken up earlier because I was on leave almost during the whole of the month of March, 1958, and the original record was in the High Court from August 30, 1957, to February 23, 1958, or thereabouts in connection with the hearing of Civil Rule No. 2291 of 1957, since reported in 62 Calcutta Weekly Notes 240. Fortunately, both the Houses, on the reports of their Committees of Privileges (the Rajya Sabha report is in File C/1 of the record), deputed competent officers to this Tribunal with the necessary papers, and a break was averted. But on May 10, 1958, the seventh day of the trial, the learned Government Pleader and the learned Advocate Shri Basu, appearing for the then sole respondent Shri Roy, retired from the case on my refusal to grant any postponement of the part-heard proceedings on the ground that the Election Commission had been moved for withdrawal of this case from this Tribunal under section 89 of the Act. Most sorrowfully and reluctantly I proceeded with the trial from then on an *ex parte* footing. Ultimately the application of Shri Roy under section 89 of the Act failed before the Election Commission on May 22, 1958. And the Rule issued by his Lordship D. N. Sinha, J., permitting me to continue the hearing *ex parte* but restraining me from delivering judgment, became infructuous and was discharged on May 27, 1958. His Lordship's order in Civil Rule No. 1430 and the Election Commission's order are in File A of the record. But on May 24, 1958, Shri Roy had invoked section 116 of the Act and successfully too, as noticed in paragraph 5 *supra*.

13. This Tribunal welcomed the substituted respondents in place of Shri Roy with a view to continuing the proceedings: *vide* Order No. 72 dated July 3, 1958, and Order No. 73 dated July 10, 1958. For the substituted respondents and their learned advocates who have ungrudgingly helped this Tribunal, a catastrophe has been averted, namely, a case of his magnitude had not to be heard *ex parte*. I would have, however, welcomed Shri Roy as a contesting respondent or even as a witness, all the more.

14. The hearing was resumed at 10-30 A.M. on August 5, 1958, from the point where it was left at 10-30 A.M. on May 10, 1958. PW. 9 Ramchandra Singh, PW. 10 K. C. Ghose, PW. 11 Anilkumar Sadhukhan and PW. 12 Kalipada Banerjee were cross-examined.

Before the resumption they were only examined in chief. Two other witnesses, PW 4 Sailendranath Niyogi, recalled and re-examined on May 10, 1958, and PW 6 Abhedananda Das, similarly recalled and re-examined on May 12, 1958, were not needed by the substituted respondents for cross-examination and were not, therefore, summoned to appear: *vide* paragraph 4 of Order No. 80 dated August 5, 1958. Evidence on behalf of the petitioners thus closed on August 8, 1958, the learned Advocates for the substituted respondents informed this Tribunal that they called no oral evidence. Thereafter, arguments were heard exhaustively on August 6 and 18, 1958. Shri Basu immediately before addressing me just mentioned the question: Who would argue first in view of the fact that no oral evidence was led by the substituted respondents? But he submitted at the same time that he made no point of it. None else of the learned Advocates touched it even. Shri Basu began and was followed by Shri Chatterjee. Thereafter, I heard the learned Senior Standing Counsel and also Shri Chatterjee and Shri Basu in reply.

15. Now to the truncated Issue No. 3, again. It is the only issue on which the petitioners and the substituted respondents go to trial at its resumption, though the petitioners had the complete freedom at the resumed hearing to pursue other issues: *vide* the 8th paragraph of the Order No. 77 dated July 21, 1958. This Tribunal has been addressed on no other issue either by the learned Senior Standing Counsel arguing for the petitioners or by Shri H. K. Chatterjee appearing all through for the substituted respondent N. C. Das or by Shri B. P. Basu appearing all through for the substituted respondent Brajagopal and Devaprasad. Shri Sen appearing for the other set of substituted respondents, Sudhabindu and three others, has adopted at every stage of the trial all that has been asked and argued by Shri Chatterjee and Shri Basu. But it must be recorded in fairness to Shri Chatterjee that, his main argument over, he raised a point of maintainability rested on absence of authority of Shri Asoke Krishna Dutt to present the election petition (which he did) before the Election Commission under section 81 of the Act, and ransacked the issues on record to see under which such a contention could be put. Ultimately he found none. I shall deal with it in due course.

16. The importance of the truncated and adjusted third issue is such that it bears repetition. Now it reads—

"Is Shri Biren Roy disqualified for being chosen as a member of the Lok Sabha because of his connection with a firm under the name and style of Indo-German Trade Centre?"

"Connection" in the context of pleadings and submissions made at the Bar means any share or interest in terms of section 7(d) of the Act in the contract referred to above, entered into by the Indo-German Trade Centre with the Central Government. The expression section 7(d) of the Act uses is "the appropriate government". Is the Central Government with which the Indo-German Trade Centre entered into a contract "the appropriate government" within the meaning of section 7(d) of the Act? An affirmative answer cannot be in doubt. Section 7(d), it will be seen, is in Chapter III of Part I of the Act. And there is an independent interpretation clause for this chapter: section 9. It reads, in so far as it is material for the present purpose,—

"9. Interpretation, etc.—(1) In this Chapter—

"(a) 'appropriate Government' means, in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government.....

Thus, it appears to be beyond argument that the "appropriate government" referred to in section 7(d) of the Act means the Central Government.

17. It is now time to call attention to the relevant excerpts from section 100(1)(a) of the Act:

"100. Grounds for declaring election to be void.—(1)..... if the Tribunal is of opinion—

"(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act.

.....
.....
.....
.....
the Tribunal shall declare the election of the returned candidate to be void."

What the date of election of a returned candidate is has been provided in section 67A of the Act—

"67A. Date of election of candidate.—For the purposes of this Act, the date on which a candidate is declared by the Returning Officer under the provisions ofsection 66, to be elected to a House of Parliament..... shall be the date of election of that candidate."

(Words in section 67A not required for the present discussion have been omitted in the quotation above.)

The date of election here of Shri Roy from the Calcutta South-West Parliamentary Constituency is March 20, 1957. There is the averment to that effect in the 5th paragraph of the election petition, which Shri Roy traverses in the 9th paragraph of his written statement as under:

"9. The statements in paragraph 5 are substantially correct."

This matter having been concluded by the pleading, no evidence *aliunde* has been led to show what the date of election of the returned candidate, Shri Roy, is. None appears to be necessary either.

18. These preliminaries settled about the meaning of the words "connection with the Indo-German Trade Centre", of the expression "the appropriate Government" section 7(d) of the Act uses and of the words "the date of election"—words to be found in section 100(1)(a) of the Act, I now proceed to determine the third issue as it now stands. To determine that, the following questions arise, the last of which needs a searching examination:

- (i) Did the Indo-German Trade Centre enter into a contract with the Central Government for installation of automatic vote-recording equipment in the Lok Sabha and the Rajya Sabha?
- (ii) Was the contract subsisting on the date of the election of Shri Roy, to wit, on March 20, 1957?
- (iii) Has Shri Roy any share or interest in the aforesaid contract?

Paragraph 9 of Order No. 77 dated July 21, 1958, may be looked into in this connection.

19. The first question formulated in the preceding paragraph admits of an easy answer. The answer is that the Indo-German Trade Centre did enter into a contract with the Central Government for installation of automatic vote-recording equipment in the Lok Sabha and the Rajya Sabha. Shri Basu, the learned Advocate for the substituted respondents, Brajagopal Das and Devaprasad Roy, has somewhat lightened my labour by admitting the existence of such a contract. Still, reference has only to be made to the papers set out below to be convinced of the fact that there has been such a contract:

- (1) Ext. 4.—A letter dated January 19, 1956, over the signature of K. C. Ghose, PW. 10, for Indo-German Trade Centre to the address of Shri S. P. Chatterjee, a Deputy Director of Supplies, submitting the tender in duplicate for the supply of automatic vote-recording equipment for the Lok Sabha, New Delhi.
- (2) Ext. 5.—The tender itself with necessary papers over the signature of K. C. Ghosh too for Indo-German Trade Centre, save that in the Income-tax Clearance Certificate, part of the tender, just below the signature of K. C. Ghosh occur the words "Proprietor, Indo-German Trade Centre".
- (3) Ext. 6.—A letter dated April 9, 1956, from the Director-General of Supplies and Disposals, over the signature of Shri Harish, an Assistant Director, "for and on behalf of the President of Union of India", accepting the tender just noticed.
- (4) Ext. 7.—The tender for installation of automatic vote-recording device in the Rajya Sabha along with two forwarding letters purporting to be over the signature of B. K. Mukherjee, one dated May 26, 1956, and the other dated June, 6 following, other papers, beautiful photographs illustrating the equipment and all, marked collectively.

20. These primary documents apart, the long line of letters, Exts 3 series touching the installation at the Lok Sabha and Exts 8 series touching the installation at the Rajya Sabha, have to be taken into reckoning. On top of that, here is the evidence of Shri S. P. Chatterjee, PW. 1, a Deputy Director, Supplies:

About the Lok Sabha tender, Ext. 5, at page 4 of his recorded evidence.—

"It was sealed tender along with others. And it was duly opened by us in public. This very tender was accepted with some modifications. Acceptance over, work was executed in accordance with the terms of the tender."

Again, at page 7 of his recorded evidence, about the Rajya Sabha tender. —

"The contract for installation of automatic vote-recording equipment in the Rajya Sabha was duly executed by the Indo-German Trade Centre after its tender was accepted."

21. The conclusion, therefore, seems to be ineluctable—and I find so as a fact—that the Indo-German Trade Centre did enter into a contract with the Central Government for installation of automatic vote-recording device in both Houses of Parliament.

22. The second question listed in paragraph 18 *ante* now merits notice:

Was the contract subsisting on March 20, 1957, the date of election of the returned candidate, Shri Roy, within the meaning of section 67A and section 100(1)(a) of the Act?

Here also Shri Basu concedes the answer: the contract was subsisting, pointing out at the same time that the English law is otherwise. That indeed is true. In England an executed contract does not disqualify (Scheffield: Parliamentary Elections, 2nd Edition, page 95). The admission of Shri Basu apart, about the contract subsisting on March 20, 1957, there is the telling evidence of PW. 1 Shri S. P. Chatterjee again. At page 4 of his recorded evidence on Lok Sabha contract—

"Yes, in the first part of 1957 from January to April the contract in terms of the tender was alive. Sir, I cannot say after April. I can say it was alive up to March, 1957. Over 10 per cent. of the payment for the aforesaid contract is still due. And by April, 1957, what remained due and outstanding for the contract was still more."

Again, at page 7 of his recorded evidence on the Rajya Sabha contract—

"Yes, in the months of January to April, 1957, this contract was subsisting."

I, therefore, find as a fact that the Indo-German Trade Centre's contract with the Central Government, as referred to above, did subsist on March 20, 1957.

23. Much the most important question—the third one—formulated in paragraph 18 *ante* is now taken up for consideration:

Has Shri Roy any share or interest in the aforesaid contract?

Before I proceed to deal with the materials giving an answer to this question, I remind myself of two principles which must not be lost sight of. First: the success of Shri Roy by such a comfortable margin (12,538 votes) should not be lightly interfered with. That is "a sound principle of natural justice", as observed by his Lordship Mahajan, C. J., in Jagan Nath's AIR 1954 SC 210. Second: The objects of section 7(d), which alone now concerns me, is, "to prevent the conflict between interest and duty that might otherwise inevitably arise". A member of Parliament entering into a contract with the Central Government can hardly be expected to do his duty *qua* member in a manner he should when such a deal in which he is so interested comes up before Parliament or any one of its committees for discussion and decision. His interest and duty clash. Section 7(d) guarantees that he must not be "exposed to temptation or even to the semblance of temptation". At the same time, mere sentimental interest arising out of natural love and affection of a father for a son or of a brother-in-law for a brother-in-law (as here) appears to be beneath the notice of this statutory provision. Further, an interest in a contract to be caught by section 7(d) must be a pecuniary or at least a material interest, but it need not be a pecuniary advantage. It may equally be the likelihood of a pecuniary loss. (More of which hereafter).

24. With these two principles in the forefront of my consideration, I have weighed over and over again the evidences—oral and documentary—led at the trial. Taken individually one after another, most of these evidences cannot have the slur of disqualification under section 7(d) of the Act put upon Shri Roy. Taken collectively—on which the learned Senior Standing Counsel stresses so much,—the position does not, in my judgment, improve by one jot or tittle. Weak evidence added to weak evidence does not make for strong evidence, just as any number of ciphers added to a cipher gives you nothing but a cipher. Deliberately have I used the words "most of these evidences." Most, because I find some evidences which between themselves prove to the satisfaction of a prudent man that Shri Roy has, in any event, interest in the contract entered into by Indo-German Trade Centre with the Central Government for installation of automatic vote-recording equipment in both the Houses of Parliament. I proceed to state in chronological sequence what those evidences are.

25. October 28, 1952, and Shri Roy addresses a letter, Ext. 19/4, to the lessor Messrs. Diamond Sugar Mills, Ltd., 28 Stephen House, which houses the Indo-German Trade Centre too (as the printed letter head shows), complaining about various inconveniences suffered only because of the obtuse headedness of the lessor. "Our business is suffering on account of light and, of course, we and our clients are put to a lot of inconvenience and difficulties by the absence of fans." What is meant is the cessation of electric current. Not that the fans were not there. There is no mistaking the signature of Shri Roy here. I do not pretend to be a handwriting expert. But the lack of my expertness does not worry me in the least. One has only to compare the admitted signatures of Shri Roy in the written statement and other papers on record (such as his application under section 116 of the Act on May 24, 1958) with the signature here in Ext. 19/4 to be convinced that they are all the signatures of one and the same person: Shri Roy. No doubt, each

person signs in his own way. But Shri Roy's signature has features all its own, distinguishing it from so many others. To see this signature is not to forget it. If Shri Roy is nobody to the Indo-German Trade Centre and if the Indo-German Trade Centre is nothing to Shri Roy, how is it that he addresses such a letter to the lessor of the accommodation where Indo-German Trade Centre is housed, complaining about his business suffering and his clients being put to a lot of inconvenience?

26. On reference to Shri Roy's passport, Ext. L, it has been contended that he could not have lent his signature to this letter, Ext. 19/4, on October 23, 1952, because the date of his arrival in India, as noted in the passport, Ext. L, by the Calcutta Police, Passport Control, is October 26, 1952. Shri Roy, the contention runs, was not here on October 23, 1952. I took the passport in evidence as a public document, which it undoubtedly is, overruling the objection on behalf of the petitioners (*vide* note by Tribunal at page 34 of the recorded evidence of PW 10 K. C. Ghosh). After having given the matter further and better consideration, I shall not unsay what I said then. The passport goes in evidence and with it all entries made inside of it, including the endorsement made by the Calcutta Police, Passport Control, noting the date of Shri Roy's departure on August 4, 1952, and the date of his arrival on October 26, 1952. What is apt to strike one is that such police endorsements noting the arrival and the departure are only two and no more, though Shri Roy visited foreign countries on other occasions as well. Still, I have not thought it fit to examine any court witness from the Calcutta Police, Passport Control, which I was verbally invited to do by Shri Basu after his misconceived application inviting this Tribunal to write a letter to the Calcutta Police was not pressed (*vide* paragraph 6 of Order No. 84 dated August 8, 1958). Because on merits such a contention resting on the passport entries about the arrival in India does not help matters forward for Shri Roy. I may not, indeed, I should not, take notice of the pencil entry, 28th October, 1952, at the top of Ext. 19/4 the learned Senior Standing Counsel's contention notwithstanding. Who wrote the pencil entry and what led to that entry being made I do not know. No evidence is there to that effect. That indeed is not of the least materiality. What really is of the utmost materiality is: Why sign a paper with the letter head "Indo-German Trade Centre" in print, and say all that appears above your signature? Shri Roy did not surely sign it with his eyes shut. He must be held to the sanctity of his signature on his return to Calcutta on October 26, 1952, even though it might bear the date October 23, 1952. There can be no running away from his signature.

27. Did Shri Roy sign blank papers which were kept with PW 10 K. C. Ghosh? At page 33 of Ghosh's recorded evidence—

"Q. Did you keep with you any papers which were blank and signed by Shri Biren Roy?

"Ans. No. I do not recollect. Hence I cannot answer it."

Not a happy answer for an intelligent witness like Ghosh. But what really is at the back of this suggestion? The typed portion in Ext. 19/4 was typed afterwards, Shri Roy's signature having been there from before on the blank paper and Shri Roy, therefore, not knowing anything about its contents. To suggest so is to suggest too much. And a suggestion is not proof. Nor do I see any merit of probability in such a suggestion. Further, the same question repeats itself: Why does Shri Roy sign the blank paper of the Indo-German Trade Centre with its name in the printed letter-paper?

28. It has not been suggested, nor argued, that the business Shri Roy speaks of in Ext. 19/4 is the business of the Indian Airman, an aviation journal, Ext. I, of which Shri Roy has been the editor, or that the Indo-German Trade Centre was out autograph hunting, as a result of which they succeeded in getting the signature of Shri Roy at the bottoms of its, printed letter-paper. So, I leave such consideration alone.

29. Only because K. C. Ghosh, PW 10, cannot say even by guess how many days ahead of October 23, 1952, the Indo-German Trade Centre had come into being—it is indeed very difficult to say so,—I do not see any "gigantic conspiracy", as Shri Basu does, in the birth of Indo-German Trade Centre in the presence of Shri Roy. I accept K. C. Ghosh's evidence that Indo-German Trade Centre had come into being in the latter part of October, 1952, when Shri Roy, even going by the entries made by the Calcutta Police, Passport Control, in the passport, Ext. L, had returned home from his tour abroad. In any event, what demands an answer and what has not been answered yet it: Why does Shri Roy lend his signature to a letter like Ext. 19/4 if he had had no connection with the Indo-German Trade Centre?

30. The contention that PW 9 Ranchandra Singh, the law agent of the Diamond Sugar Mills, produces this document, Ext. 19/4, and not Sohanlal Murarka has little in it. Sohanlal Murarka apart, the Director of the Diamond Sugar Mills was cited (*vide* the application of the petitioners, dated March 29, 1958) and was asked to produce by a competent person the correspondence, etc., regarding their sub-tenant Shri Biren Roy. So,

the law-agent Ramchandra Singh appears to be quite a natural and competent witness too; all the more so when it is remembered that Sohanlal Murarka is one of the three Directors. Equally ineffective is the contention that Datta Sahib (Kedarnath Datta) who had handed over the paper, Ext. 19/4, to the witness Ramchandra Singh is not examined. This Tribunal sees no merit in multiplying witnesses on the same point. Nor does it see any utility in attacking the custody of Ext. 19/4 when the apparent and admitted signature of Shri Roy is there.

31. January 14, 1956, and Shri Roy uses his own letter paper with his name Biren Roy, M.L.A., and address embossed at the top for addressing a communication to Shri S. P. Chatterjee about the tender which bulks large here. It is Ext. 3, the first paragraph of which reads—

"Dear Mr. Chatterjee,

"I was shown a communication by the Indo-German Trade Centre of 50 Stephen House, Calcutta, about the submission of tender for the Automic Voting System as is in operation in the West Bengal Legislative Assembly and quoted also for the Lok Sabha by Telefonbau Und Normalzeit of Frankfurt/Main, Germany".

Why does Indo-German Trade Centre show such an important communication to Shri Roy who "has or had absolutely no connection with the said business", as the averment in paragraph 22 of the written statement goes?

The second paragraph of the letter reveals that Shri Roy knows a lot about this business—purchase of a tender form a air-mailing the same to Germany for submission in India by January 23, 1956, despatch of an engineer by the German firm, taking of measurements, incurring of expenses, quoting of rock-bottom price, etc., etc.

The third paragraph pleads for "a little further extension in time" in case the tender does not reach by January 23, 1956.

The fourth paragraph is important.—"The Indo-German Trade Centre has however been advised by me to submit a tender quoting the equipment as manufactured by the said firm, and on their guarantee directly. When the manufacturing firm is directly dealing and has already quoted to the Lok Sabha and is going to submit the tender themselves, their quotation will certainly be favourable and should hence be preferred".

Do I see in the writer of this letter a gentleman who "has or had absolutely no connection" with the business, or a gentleman who is immensely interested in it? I see not merely a sentimental interest arising out of natural love and affection of a brother-in-law for a brother-in-law, assuming Shri B. K. Mukherjee, a brother-in-law of Shri Roy, to be the real owner. I see instead in the writer of the letter a gentleman whose interest in the tender is vital and who is all out to see the success of the venture. The Indo-German Trade Centre does not dominate him, but is dominated by him and is advised by him about the correct step to be taken: submission of an independent tender quoting equipment, etc. I regret my inability to treat the letter as a mere "recommendation" (to quote Shri Chatterjee) from "a brother-in-law like Shri Roy of international fame" (to quote Shri Basu), without Shri Roy having any manner of interest in the business. To read the letter so will be to misread it. The eminence of Shri Roy is not to be denied. What is denied, however, is the esoteric interpretation sought to be put upon a plain letter, Ext. 3, which can have but one meaning: the writer, Shri Roy, is materially interested in the contract.

It only remains to be recorded that Shri Rajan, Director General of Supplies and Disposals, New Delhi, claimed privilege for this letter, Ext. 3, and that, for reasons recorded by me in Order No. 35 dated April 28, 1958, I overruled this claim.

32. April 20, 1956, and Shri Roy, in the same type of letter paper just notice, writes to Shri Ghosh, PW 10. The letter is Ext. 27. It is such an important document that I consider it necessary to reproduce the whole of it:

"Biren Roy, M.L.A.

Behala, Calcutta-31.

Phone: 45-3319.

April 20, 1956.

"My dear Ghose,

"On my advice you took up the work of the INDO-GERMAN TRADE CENTRE and carried it on in behalf of the principal Sri B. K. Mukherjee. You are also leaving the same again on my advice, and as such I shall be responsible for and in case the said principal or anybody claims or brings forward in (any?) claim as against you, you are to have no worry on this account.

"I would, however, like you to deliver the Bank pass-book recpts and Account books, etc., for any future I.T. references and for any use of the Principal before the 27th April '56.

Yours etc.,
(Sd.) Biren Roy,

"K. C. Ghose, Esq.,
21/B, Gangulipara Lane,
Calcutta-2."

The concluding words underlined by me as also "recpts" which has been underlined too are in manuscript, the rest of the letter having been typed.

33. On Shri Roy's advice PW 10 Ghosh has taken up the work of the Indo-German Trade Centre and "carried it on in behalf of the principal Sri B. K. Mukherjee", a brother-in-law of Shri Roy. On his advice again, PW 10 Shri Ghosh left the work he was doing. Why so frequent advice by Shri Roy? On January 14, 1956, he advises the Indo-German Trade Centre to submit an independent tender, as Ext. 3, already noticed, reveals. What this exhibit, namely, Ext. 27, reveals is still more significant. On two very important occasions Shri Roy advises what he calls "the principal"—

- (i) who will work for him; and
- (ii) When he will cease working so.

Is Shri Roy, then, the real owner and the real man behind the organisation: Indo-German Trade Centre? I do not go so far as that. It is hardly necessary for me to do so either. All I find is that Shri Roy is materially interested within the meaning of section 7 (d) of the Act in the organization—not sentimentally interested in the welfare of his brother-in-law: Shri B. K. Mukherjee.

34. This is not all. PW 10 Shri Ghosh is leaving Indo-German Trade Centre on Shri Roy's advice. "As such", Shri Roy "shall be responsible for and in case the said principal or anybody claims or brings forward in (any?) claim as against you, you are to have no worry on this account". By having written this, Shri Roy appears to have damaged his case beyond repair. Indeed, disqualification under section 7 (d) of the Act is writ large here. How high is the standard in a matter like this will be apparent from England vs. English 1920, 2 K.B. 368. The address of the shop run by a member of the Corporation in England appeared in some of the spectacle cases supplied by his son, not a partner but a paid employee of the father, on the basis of a contract of his own with the Corporation. Even so, it was held that the father, a member of the Corporation, had interest in the contract and was, therefore, liable to penalties, as is the English law. This appears to be a good authority in interpreting section 7 (d) of the Act. Their Lordships of the Orissa High Court followed it in the recent case of Akshya Narayan Praharaj: AIR 1958 Orissa 207—the current August issue, as it appears from the headnote. But the report is incomplete as I write the judgment, and, so, I cannot say more about it.

35. To revert to the facts here, how much stronger they are! The likelihood of a pecuniary loss befalling Shri Roy because of his unequivocal commitment in Ext. 27 is always there. As soon as that is said—and that must be said, Shri Roy has interest, within the meaning of section 7 (d) of the Act, in the contract entered into by Indo-German Trade Centre with the Central Government. I need not put it any the higher, though it can be said, as has been said by the learned Senior Standing Counsel: Why go in for so much, for future liability, when you have had no connection with the business? Unless the business be yours, what is the point in your standing for the future liability? Shri Chatterjee, on the other hand, sees in Ext. 27 an act of magnanimity on the part of Shri Roy out to save Shri Ghosh who was appealing to be saved on the apprehension that Shri B. K. Mukherjee would "throttle" him (Ghosh), as Shri Chatterjee puts it. With respect, on materials I have had put before me and on evidence I have heard, I cannot bring myself to hold so. Indeed, to argue so is to depart from the realm of evidence and to enter into the realm of speculation. Shri Ghosh was specifically asked about all this, and his denial rings true.

At page 19 of his recorded evidence—

"It is not true that the indemnity executed by Biren Roy became necessary because B. K. Mukherjee gave me a job at the request of Biren Roy.

"I was at no point of time under the employment of B. K. Mukherjee.

"It is not true that I took that sort of indemnity from Shri Biren Roy because I wanted to save myself from the attack of B.K. Mukherjee."

36. Shri Chatterjee asks me to read this letter, Ext. 27, in the light of several facts and circumstances set out below.

- (i) Shri B. K. Mukherjee, a son of a quondam Jaipur Dewan, is a rich man, ordinarily residing at Jaipur.
- (ii) But he runs a business here with the assistance of Shri Roy and his brother, Shri Ramen Roy.
- (iii) PW 6 Shri Abhendananda Dass proves the specimen signature of Shri Ramen Roy, Ext. 15/2, in the Bank of India, which contains an endorsement about a power of attorney favouring Shri Ramen Roy.
- (iv) Shri B. K. Mukherjee is "a cautious businessman", not a pliable fellow.
- (v) Shri K. C. Ghosh, PW 10, considers Shri Roy as his benefactor to this hour. To such a man as Ghosh such a one as Shri Roy addresses a letter, Ext. 27, which gives Ghosh complete satisfaction. He worries no more about his liability in future for Indo-German Trade Centre.
- (vi) This exhibit, namely, Ext. 27, is dated April 20, 1936. Only three days later, to wit, on April 23, 1936, PW 10 Ghosh executes a deed of release in favour of B. K. Mukherjee, and some days later Ghosh presents himself at the Behala branch of the Alipore Registry where Ext. G, the deed of release, was registered, to furnish himself with a certified copy thereof.
- (vii) At the first lap of the trial, PW 10 Ghosh gives evidence before this Tribunal on May 10 and 12, 1938. Only seven days later, namely, on May 19, 1938, B. K. Mukherjee raises an action in the Original Side of the High Court, impleading Ghosh, PW 10, the petitioners before this Tribunal, Banerjee and Sadhukhan, and also Shri Roy. The plaint, Ext. 33, be taken into consideration. Has Shri Ghosh taken any defence there so far?
- (viii) Shri Asoke Krishna Dutt, son of the defeated candidate, Shri Ashim Krishna Dutt, has been acting as Ghosh's Solicitor in that litigation without having charged anything so far as his remuneration.

37. I have done what Shri Chatterjee has been good enough to ask me to do. Indeed, I have gone a little more. I have assumed that all matters listed in the preceding paragraph are supported by evidence on record, though that is by no means the case. To give but one example, there is no evidence that B. K. Mukherjee is rich. A mere suggestion to that end put to PW 10 Ghosh is there. Being the son of a Dewan of Jaipur, certainly Shri Mukherjee comes of a respectable family. But respectability is not opulence as opulence in itself is not respectability. Even having stretched so much in favour of Shri Chatterjee, I do not see how the eight considerations enumerated in the preceding paragraph can, singly or collectively, rid Shri Roy of his unequivocal admission in Ext. 27 proclaiming himself answerable for any claim brought against K. C. Ghosh for his work in Indo-German Trade Centre and thus proclaiming his interestedness too in the contract within the meaning of section 7(d) of the Act. On the basis of this letter, Ext. 27, coupled with two other letters, *viz.*, Exts. 19/4 and 3, I do not hold that Shri Roy is the proprietor of Indo-German Trade Centre. It is not necessary for me to go to that length. All I hold is that Shri Roy is interested, within the meaning of section 7(d) of the Act, in Indo-German Trade Centre and its contract.

38. Shri Chatterjee invites my attention to the last paragraph in Ext. 27, where Shri Roy asks PW 10 Ghosh to return the bank pass-book and other papers. In doing so, he contends:

Ghosh will not part with these papers—a fact which shows him in his "true colours". On the other hand, B. K. Mukherjee has been "pestering" Shri Roy for these very papers, which Ghosh has been holding back. The necessity of a letter like Ext. 27 is on the side of Ghosh who keeps in his pocket a certified copy of the deed of release, Ext. G, as his talisman, so to say, even when he is in the witness box. Consider Ext. 27 in this back-ground.

39. I have done so. Here also it defeats me how such an approach can prevent the terrors of Ext. 27 from being shaken on Shri Roy. Really, the contention put forward comes to this: Ghosh is blackmailing Shri Roy by withholding the papers. Ext. 27 is the result of this blackmail. I can hold blackmail and even worse if there is evidence, direct or circumstantial, to that end. Here there is none. There is not even a particle of evidence to show that B. K. Mukherjee was "pestering" Shri Roy for the papers. And then, who blackmails whom? A small man, which K. C. Ghosh is, successfully blackmails one like Shri Roy, and that too over such a petty issue? A prudent man cannot hold so in all circumstances here without forsaking his prudence. True it is that Ghosh was anxious to bring out a paper, presumably the certified copy of the deed of release, from his pocket while in the witness box with a view to refreshing his memory. But I stopped him. And there the matter ends. That has little to do with the manner or accent of reading Ext. 27.

40. Ext. 27, dated April 20, 1956, is over the signature of Shri Roy, who makes himself answerable for future claims and asks K. C. Ghosh "to have no worry on this account". Yet three days later a deed of release, Ext. G, comes to be executed by Ghosh and in favour of B. K. Mukherjee. Why has it been so? Let the recorded evidence of PW 10 Ghosh answer it. At page 19:—

"Q. Since your evidence is that you broke off relations with Shri Biren Roy on your failure to get any percentage of profits as previously agreed upon, will you tell my Judge what was the necessity of having a letter from Shri Biren Roy, as Ext. 27 is?"

"Ans. I was acting for Shri Biren Roy. So, when asked by him to execute a deed of release in favour of B. K. Mukherjee, which I did, I said: Where stand I? I have been working for you and under you. I know you only. So, when I am to execute a deed of release in favour of another, namely, B. K. Mukherjee, I must be assured of my immunity from any liability. To that Shri Roy answered back: As you very well know, having been an M.L.A. myself, I cannot have such matters in my name. Just like you, B. K. Mukherjee is a name-lender too."

To err on the side of safety, let me not pay heed to what, according to PW 10 Ghosh, Shri Roy, "answered back". Still, what remains receives striking corroboration from Ext. 27, written by Shri Roy on April 20, 1956, and Ext. G, executed by Ghosh on April 23, 1956, in favour of B. K. Mukherjee. Ext. G is a solemn registered document, and Ext. 27 a mere letter.

41. The learned Senior Standing Counsel sees in Ext. 27 "a contract of indemnity" within the meaning of section 124 of the Contract Act. Shri Basu, on the other hand, sees in it "a letter of assurance only", and nothing more. To an Election Tribunal, which is not called upon to pronounce a decree on the basis of Ext. 27, it does not matter which. Let me say with Shri Basu that it is "a letter of assurance only". The same question again: Why does Shri Roy give assurance to stand for future liability when he has nothing to do with the business? And the same answer too: Only because he is materially interested, within the meaning of section 7(d) of the Act, in the business. It may just be added that some time before the contract, to be exact, on October 20, 1955, PW 10 Ghosh drew a cheque, Ext. 16, for Rs. 1,190 in favour of Shri Roy—the amount having been duly credited to the joint account of Shri Roy and Sm. Asha Devi, as the Cash Transfer Book, Ext. 29, read along with the pay-in-slip and the relative foil, Exts. 23 and 23/1, goes to show. Let Ghosh be condemned for betraying the trust reposed on him. But that will not show Shri Roy as not having received the money from Indo-German Trade Centre, when he had actually received it.

42. The contention on behalf of the substituted respondents is that "interest" within the meaning of section 7(d) must be pecuniary interest only. Here, Indo-German Trade Centre has nothing like any pecuniary interest in the contract; and, consequently, Shri Roy, even if he has interest in Indo-German Trade Centre, cannot come on the edge of section 7(d). Such a contention, however, appears to be against the weight of authorities which I notice one after another:

(i) *England Vs. English*, 1920, 2 K.B. 636, referred to already, shows no pecuniary interest.

The address of the shop run by the member of the Local Corporation appeared on some of the spectacle cases supplied by the son of the member on the basis of a contract with the Corporation in his own name. The father and the son were not partners. Indeed, the son was a paid employee only. But the possibility of a pecuniary advantage was there: the address on the cases might serve as an advertisement and give a fillip to his trade.

(ii) *Akshya Narayan Praharaj Vs. Maheswar Bag*, AIR 1958 Orissa 207, also referred to earlier, follows the English case just cited in interpreting section 7(d) of the Act. It emphasises that, though an interest in a contract must be a pecuniary or a material interest, it need not be a pecuniary advantage. If a candidate incurs loss in executing a work undertaken by Government, it does not mean that he has no interest in the contract within the meaning of section 7(d). (I repeat I am going by the head-note only, the report being still incomplete).

(iii) To the same effect is the observation of D. N. Sinha, J., in *Pramodelal Vs. Addl. District Magistrate, 24-Parganas*, 61 CWN 11 at page 22, in construing section 22(f) of the Bengal Municipal Act, 1932, which has a striking similarity with section 7(d) here. Interest excludes sentimental interest. It "need not, however, be only the possibility of a pecuniary advantage, it may equally be the likelihood of a pecuniary loss". (On Ext. 27 is writ large the likelihood of Shri Roy's pecuniary loss). "The accruing benefit need not be direct. The possibility or even probability of an actual resulting benefit will be sufficient." The observations are no doubt in the nature of *obiter*. But I do not read his Lordship's decision to mean that it lays down one proposition only, namely, that interest does not include sentimental interest, as Shri Chatterjee invites me to do. His Lordship lays down all that I have quoted, prefacing this finding with the remark at page 21 that "the above.....is entirely sufficient to dispose of this application, and

It is not necessary to enter into the merits of the case". Indeed, that cannot be otherwise. The doctrine of conflict between interest and duty, out of which other propositions emerge, is a well recognized doctrine in India too, as shown in paragraph 46 *infra*.

- (iv) Nutton P. Wilson, 1889, 22 Q.B.D. 714, from which I have quoted in paragraph 23 *ante*, is also there. The object of a provision like this is "to prevent conflict between interest and duty that might inevitably arise". Shri Roy, with the liability to be shouldered by him in terms of his own letter, Ext. 27, can hardly be expected to do his duty as a member of Parliament over anything about the contract. His interest in the contract and his duty as a member of Parliament do clash and thus defeat the very object for which section 7(d) is there.
- (v) *In re* S. N. Patnaik, 13 E.L.R. 58, the Election Commission, on a reference made by the Governor of Orissa, gives the opinion that interest in a contract with Government within the meaning of section 7(d) need not necessarily be financial interest. There Shri S. N. Patnaik, M.L.A., worked on a road project. He had thereby got an opportunity of "cultivating" or "nursing" the constituency, financial interest or no financial interest. Further, there was a scope for making profit, it being immaterial whether or not profit was actually made. Thus, the bar of section 7(d) stood between Patnaik and his success at the poll.

I do not think much of the contention that this decision is not binding on me as a decision of the High Court or the Supreme Court is. No doubt, that is true. But I can be persuaded by the decision of the Election Commission. And I have been persuaded.

I, therefore, reject the contention noticed in the beginning of this paragraph on the construction of sec. 7(d).

43. Then, upon the whole of the materials here, it draws largely on my belief that in the contract Indo-German Trade Centre has no pecuniary interest or advantage along with the possibility of such an advantage or even just the opposite, namely, the possibility of a loss. That the "Centre" will take one trouble after another for months and years on end in a contract to the tune of several lakhs of rupees only as a labour of love seems, on the face of it, a startling proposition. Turning to the evidence, let me exclude from my mind what PW 10 Ghosh says on this—"The price quoted for the machinery for installation of automatic vote-recording equipment included 15% commission for the Indo-German Trade Centre or Shri Biren Roy"—in answer to Tribunal at page 8 of his recorded evidence. I exclude this evidence not because it is so unworthy of credence, but because it is better to be even over-cautious in a matter like this. All the more so, as it is clear that there is no love lost now between Shri Roy and Shri K. C. Ghosh, however, much Ghosh might say that to this hour he considers Shri Roy to be his benefactor and however much he might protest that he has been dragged as a witness much against his will. The learned Senior Standing Counsel argues that "the best antidote" for the evidence of Ghosh is the evidence of B. K. Mukherjee and Shri Roy—evidence which has been withheld. An argument of considerable force, which compels attention. Shri Basu argues that, if the Tribunal believes K. C. Ghosh, non-examination of Shri Roy is immaterial, and that, if the Tribunal does not believe Ghosh, Shri Roy's non-examination is equally immaterial. Though nicely put, such an argument breaks down on the obvious fallacy that the evidence of Shri Roy as also of B. K. Mukherjee would have helped me immensely in arriving at a decision on the trustworthiness of Ghosh. Further, the presumption arising from non-examination of such important witnesses cannot be overlooked. Even so, I shall stretch in favour of Shri Roy and the substituted respondents to the breaking point, and I shall not draw any presumption adverse to them only because of such non-examination. Nor shall I go by the learned Senior Standing Counsel's contention that the prospect of appearance followed by actual appearance of K. C. Ghosh as a witness was enough to frighten Shri Roy away and to scare him away too. On the other hand, I shall assume that the trial has been proceeded with *ex-parte*. On this assumption, I ask myself: Has it been proved that in the contract the Indo-German Trade Centre has any pecuniary advantage or interest, the possibility of such an advantage or interest, the likelihood of loss and the like? And I answer: Yes, for the following, among other, reasons:

(a) Ext. A/1, a letter dated May 23, 1956, to the address of the Deputy Director of Supplies, New Delhi, by Messrs. Telefonbau Und Normalzeit, is very much in my mind. It says, *inter alia*, that Indo-German Trade Centre "has no financial commitment or profit in the deal" and "was somehow drawn into this deal, though it normally works for us as contact agents only". Ext. F, a letter dated March 10, 1956, over the signature of PW 10 Ghosh for the Indo-German Trade Centre to PW 1 S. P. Chatterjee, also calls attention. The Indo-German Trade Centre does not want to receive any money, as the same will have to be fully paid to the German firm. Ext. F/1 is merely a copy of Ext. F. But the matter does not end here, as Ext. A, a letter dated February 14, 1957, by Shri O. Prakash, Deputy Director of Supplies, to the address of the German firm reveals. That firm is called upon to

give an undertaking that the security amount of Rs. 19,824 they offer for the Indo-German Trade Centre and over which they reserve or claim no right shall be re-payable to the Indo-German Trade Centre only. Thus, pecuniary interest or advantage appears to be patent, and section 218 of the Contract Act seems to have been cited in vain.

Before I proceed to the next point, I owe it to myself to record that I did not allow any evidence on the Indo-German Trade Centre being a contact agent only of the German firm: *vide* note by the Tribunal at page 16 of PW 10 Ghosh's recorded evidence. No such plea has been taken in the written statement of Shri Roy. And the respondents substituted under section 116 of the Act are continuing the proceedings on the foot of that written statement. Continuation means that they cannot do what Shri Roy could not have done. By parity of reasoning, they can only do what Shri Roy could have done had he not retired under section 116 of the Act. Order No. 77 dated July 21, 1958, may be looked into.

(b) The Indo-German Trade Centre was never so averse to profit as is now sought to be made out. The original tender, Ext. 5, contains, *inter alia*, a clause:

"If tenderer Indo-German Centre has to supervise or undertake installation and fittings, etc., 5 per cent. on the quoted tender will be charged for."

This is natural human conduct showing the human agency operating the Indo-German Trade Centre as human too and not running after altruism, of which I heard so much at and during the trial.

The second paragraph of Ext. 4, the letter dated January 19th 1956, written by K. C. Ghosh forwarding the tender, reiterates that: the claim for a surcharge of 5 per cent. But the last paragraph of Ext. 3/3, a letter dated February 11th 1956, by the Indo-German Trade Centre to PW 1 Chatterjee, a Deputy Director of Supplies, makes it clear that "in view of further future orders, we agree to forego the surcharge in this instance". "In view of further future orders" are significant words which proclaim the possibility or probability of a pecuniary advantage and which also show that Shri Roy, so much interested in the contract, has an interest therein within the meaning of section 7(d).

(c) Ext. 3/16, a letter dated October 20th, 1956, by the Indo-German Trade Centre to the Director-General of Supplies and Disposals, laments that due to an increase of the Lok Sabha seats from 525 to 530 the German firm's quotation of an increased price ("without anything for us") has been accepted. The hankering for profits is there.

In Ext. 3/19, a letter dated November 3, 1956, the Indo-German Trade Centre casts off all sense of delicacy. For increasing the capacity of the voting equipment from 499 to 525 members, "the grand total contract amount" (if I may quote this jargon which passes off as English) increases from Rs. 3,30,600 to Rs. 3,38,256-4-0. This letter laments too that the profits of the Indo-German Trade Centre were not considered. The addressee, the Director-General of Supplies and Disposals, is thereafter given a bit of the mind of the Indo-German Trade Centre: "You cannot refuse all the time any profit to us as, while submitting this original tender for 499 members, we charged only 5 per cent. as our profit and handling as a special case to introduce this Equipment, but by your letter dated 9th February, 1956, item 5, this small profit was also denied to us, even though our Principals intimated by their letter to you on May 23, 1956, page 2, line 4-7, that we have no profit or financial commitment in the deal at all. So, for this small profit in the additional equipment and not at all in the big main Equipment of Rs. 1950 only you should not grudge." The detailed estimates enclosed do charge 10 per cent. profit—Rs. 563-12-0—in one case and Rs. 1925 in another. Still have I been asked to hold that the Indo-German Trade Centre has no pecuniary interest, no pecuniary advantage, etc., in the contract.

Again, in this very letter, Ext. 3/19, the Indo-German Trade Centre complains about the Rajya Sabha tender:

"In fact our travelling and out-of-pocket cost constitute a loss."

So, here is actual loss—and not merely the likelihood of a loss.

(d) In Ext. 3/39, another letter dated December 12, 1956—Ext. 3/36 is only a copy of Ext. 3/39—the Indo-German Trade Centre asks Shri Chand Narayan, Under Secretary, Lok Sabha, to make arrangements for the accommodation of the German experts, for which "we shall pay a reasonable rent", and also for "a good servant cook" "at our cost". So, the financial commitment is too palpable to be missed. Such expenses can be explained on the hypothesis of charity or profit. For all I have seen in this statutory proceeding, charity must be ruled out. So, what remains as the basis of such expenditure is profit, expected or actual, and, profit failing, loss. Whatever it be, the conclusion follows that the Indo-German Trade Centre has interest in the contract within the meaning of section 7(d) of the Act. And so has Shri Roy.

(e) Instead of multiplying such letters, let me close with Ext. 3/48, a letter dated April 21, 1957. Every part of the contract is "fulfilled", overcoming all obstacles. In terms of the contract, 80 per cent. advance totalling Rs. 4,40,000 is not yet paid by Government. On top of that, the Indo-German Trade Centre is saddled with more than Rs. 15,000 as out-of-pocket costs. "In spite of the usual procedure of allowing handling charge and profit to all tenderers, we have not yet been allowed even a bare 5 per cent. demanded by us". The letter concludes with the renewal of this claim of 5 per cent., which the Indo-German Trade Centre had agreed to forego on February 11, 1956: *vide* Ext. 3/3. And still it is contended in all seriousness that in the contract the Indo-German Trade Centre has nothing like any pecuniary interest or advantage or even the possibility of it. It is vain to invoke section 230 of the Contract Act with a view to feeling the pulse of the Indo-German Trade Centre, which is such live factor in the contract.

44. Thus, even on an assumption of the utmost liberality (bordering, I am afraid, on a mistaken approach) that non-examination of Shri Roy and B. K. Mukerjee does not give rise to any adverse presumption against them or the substituted respondents, it has not been possible for me to find that Shri Roy has no interest, within the meaning of section 7(d) of the Act, in the contract entered into by the Indo-German Trade Centre with the Central Government for installation of automatic vote-recording equipment in the Lok Sabha and in the Rajya Sabha. On the other hand, the conclusion seems to be clear—and I find so as a fact—that he has, by himself and on his own account, such interest.

45. To hold so or to allow the petitioners to argue so is not to depart from the pleadings, as has been wrongly imagined. Let not the words which occur in paragraph 8B(a) of the election petition be lost sight of: "In any event, at all material times the respondent Biren Roy had an interest or share in the said business carried on.....under the name and style of Indo-German Trade Centre". So, where is the departure? But I accept Shri Basu's contention about the unhappiness of the verification at the foot of the election petition, stating all these alternative cases—Shri Roy being the proprietor or partner, or, in any event, having a share or interest, etc., being true to the petitioners' knowledge. But that in itself cannot defeat the election petition or the conclusion I have come to in the preceding paragraph. Nor can it be said that to make out an alternative case is to convert the election petition into a roving and rambling inquisition. It must be remembered that these are facts within the special knowledge of the Indo-German Trade Centre and also of Shri Roy, as Ext. 3 goes to show. So, the petitioners deserve a little leniency.

46. If I have refrained so far from mentioning Chaturbhuj's case, 1951 SCA 373, cited by the learned Senior Standing Counsel, it is only because it is not germane to the facts before me. Chaturbhuj was disqualified under section 7(d), even though the contract entered into with Government by the firm of which he was a partner was in violation of Article 299(1) of the Constitution which leads to the inevitable result that it could not have been enforced against Government. Section 7(d) does not require, the Supreme Court points out, that the contract at which it strikes should be enforceable against Government. All it requires is that the contract should be for supply of goods to Government—just the case here. Then, on a question of principle, follows a passage, which has been my guide—

"The purpose of the Act is to maintain the purity of the legislature and to avoid a conflict between duty and interest. It is obvious that the temptation to place interest before duty is just as great when there is likely to be some difficulty in recovering money from Government....as when there is none."

The Indo-German Trade Centre's letter—Ext. 3/48—summarized in paragraph 43 *ante*, is an illustration of the difficulty of recovering 80 per cent. advance from the Central Government in terms of the contract. Here, as also in other letters, such as Exts. 8/29, 3/30, 8/36, etc., the Indo-German Trade Centre is bitter about it.

47. In view of all that goes before—and that is sufficient for a just decision of the instant election petition, with utmost brevity shall I refer to other features of the case, unimportant though they are.

(i) Ext. 30 is the Banker's report dated March 1, 1956, on the Indo-German Trade Centre. Ext. 2 is just the same too. The Director of Supplies and Disposals here forwards the Banker's report to New Delhi. Here also privilege was claimed only to be overruled: *vide* Order No. 35 dated April 28, 1958. The pith of the report is: "The Bank of India understands that Indo-German Trade Centre is financed by Mr. Biren Roy, M.L.A., of Behala, who is reported to be of good means." Hearsay of a bad type, even the learned Senior Standing Counsel rejects it. And so do I. But it strikes me, as I record this judgment, whether or not it can be elevated to the height of *res gestae*. Since, however, the learned Counsel appearing for all the parties and I have all along proceeded on the footing that it is a hearsay and, therefore, beneath notice, I must allow the matter to rest there.

(ii) PW 9 Ramchandra Singh's attempt to prove that Shri Roy is the proprietor of the Indo-German Trade Centre appears to be more amusing than credible. On May 10, 1958, he says in answer to my question that Shri Roy all along maintained in course of his talks with Ramchandra Singh that he was the proprietor. On August 5, 1958, however, he is definite in answer to Shri Basu that he had had no conversations ever with Shri Roy.

(iii) There are other ugly features too in the evidence of Ramchandra Singh. To speak of one only, according to him, the decree in the action in ejectment in the Small Causes Court, Calcutta, has been against Biren Roy carry on business of the Indo-German Trade Centre, suitable amendment of the plaint having preceded the decree. But the decree itself, Ext. 21, shows nothing of the kind. The description of Biren Roy as Director of the Indo-German Trade and Economic Information Centre is still there. The summons, Ext. D, shown to Ramchandra Singh, records that description too, though that surprises him, and he says: "*Kaisa Hoga* (How can that be)?"

(iv) In spite of the whole of the evidence of PW 10 Ghosh, it is not necessary for me to hold that Shri Roy is the proprietor of the Indo-German Trade Centre. And I shall not hold that which is not necessary; all the more so when I see that here is a case of two friends having fallen out and of the benefited seeking to let down the benefactor. Further, Ghosh's assuming the role of a handwriting expert and pointing out with reckless glibness what is or what is not the handwriting of Shri Roy in numerous papers, though Shri Roy had written none of the entries in his presence, has created a bad impression on me. His capacity to identify Shri Roy's handwriting was put to test about Ext. 3/42, which, according to his evidence on May 10, 1958, is in Shri Roy's handwriting and which, according to his evidence on August 7, 1958, is in whose handwriting he cannot say. That must be so, when the witness sees the writings "B. K. Mukherjee" in one letter after another and says that Shri Roy wrote it, though Shri Roy had not written so the "signatures" of B. K. Mukherjee in his presence. I can well understand a witness of Ghosh's calibre proving the handwriting of Shri Roy in Ext. 5, the Lok Sabha tender, for example, or in Ext. 25, the answer to a questionnaire touching the tender, where there are continuous writings, say, by Shri Roy. But when Shri Roy "signs" the name of his brother-in-law in a particular way which is not his usual handwriting, it is difficult to say for a layman, which Ghosh is, that that is Shri Roy's handwriting. So, I disbelieve the evidence of Ghosh to that extent. No less do I disbelieve the evidence of that Law Officer of the Behala Municipality, PW 8 M. L. Das, who sees B. K. Mukherjee sign on two or three occasions utmost—1939/40, some time between 1942/44 and 1953/54—with the tail of "B" bulging out, and thereby acquires sufficient proficiency to identify one signature after another of his. But when presumably the real signature of B. K. Mukherjee, Ext. 15/1, maintained as a specimen signature in the Bank of India, is put before PW 8 Das, he cannot identify it. No "tail" of "B" is there. The cut and the outline are entirely different. So, there is something shady somewhere. Either B. K. Mukherjee signs differently at different places or the real B. K. Mukherjee signs at one place and a sham B. K. Mukherjee signs at another. Whatever that be, I do not feel called upon to pursue this matter any further.

(v) About Benami and trust, all I need say is that, the evidence being what it is, it is not so easy to find either, though I see little merit in the argument: Ext. G, the deed of release, executed by Ghosh, admits B. K. Mukherjee to be the real proprietor and, therefore, negatives the plea of Benami.

To say so is to ignore Ext. 27, about which so much has been said. To say so is to ignore the evidence of PW 10 K. C. Ghosh, reproduced in paragraph 40 *supra*—evidence which cannot be lightly brushed aside. Again, to invoke section 115 of the Evidence Act, as has been done by Shri Basu, seeking to stop PW 10 Ghosh from denying B. K. Mukherjee as his master or employer looks like an argument of despair, if I may say so with respect. This is not an action at law, nor a suit in equity, nor a statutory proceeding between Ghosh and B. K. Mukherjee. So, section 115 of the Evidence Act can have no manner of application here. Shri Basu's reference to section 21 of the Evidence Act shares the same fate.

(vi) The learned Senior Standing Counsel relies on Uman Prasad's case, 14 Indian Appeals 127, where Lord Hobhouse, delivering the judgment of the Board on July 6, 1887, observes that even a slight quantity of evidence to show that the transaction was a sham one will suffice, in view of the fact that the system of putting property in Benami is so extremely common. But for the petitioners here, it is not such a good case as it looks. Because the lines that follow the observations of his Lordship just noticed read—

"Still, such a transfer cannot be considered as nothing. The person who infringes its apparent character must show something or other to establish that it is a Benami or Sham transaction."

That apart, Lord Phillimore, delivering the judgment of the Board on December 7, 1920, in Seth Maniklal's case, 25 CWN 409, cautions: It is essential to take care that the decision of the court rests not upon suspicion but upon legal grounds established by legal testimony.

If PW 10 Ghosh's legal testimony furnishes some legal grounds, it furnishes plenty of suspicions too. One such suspicion is furnished by the Indo-German Trade Centre's shifting to Shri Roy's house at Behala in April or May, 1955. A gravely suspicious circumstance no doubt. But a brother-in-law running an office in the house of a brother-in-law by itself is not enough. And it is not so uncommon either. But I am free to confess that on such matters I have missed very much Shri Roy and his brother-in-law, Mukherjee. Ext. 26, said to be in the handwriting of Shri Roy, is a draft letter for K. C. Ghosh to the address of the Bank and remains unsigned to this day. It is another suspicious circumstance. But that is all it is. Be that as it may, PW 10 Ghosh cannot be regarded as a witness of the type of whom I can say: There is section 134 of the Evidence Act, and in safety can I go by his uncorroborated testimony on all matters. This disposes of the several attacks made against the credibility of PW 10 Ghosh—such as prevarication about his own signature in a receipt marked Ext. N, different versions about the reason of Benami, Ghosh letting nobody know before May 10, 1958, what he would depose about and yet the petitioners setting out so many details about the Indo-German Trade Centre in their election petition and verifying them in the manner done, etc., etc.

(vii) I have not thought it fit to be much concerned about the Indo-German Trade and Economic Information Centre. Let it be taken for granted that Shri Roy was its owner, director and all. And it will not be wrong to do so either, in view of the amazing fact elicited in cross-examination of PW 9 Ramchandra Singh that the attachment before judgment of Shri Roy's car in that action in ejectment led to the compromise decree, Ext. 21. The contention that Shri Roy did all that to preserve his "prestige" may be left alone. Even then, the issue before me is about Indo-German Trade Centre, its contract with the Central Government and Shri Roy's interest in it within the meaning of section 7(d) of the Act. I have confined myself to that and that only.

48. Instead of getting lost on these petty matters which do not help the petitioners or the substituted respondents, let me reiterate what I have found above. The three letters of Shri Roy, Exts. 19/4, 5 and 27, discussed at some length in the foregoing lines, conclusively prove that Shri Roy is interested, within the meaning of section 7(d) of the Act, in the Indo-German Trade Centre's contract with the Central Government for installation of automatic vote-recording equipment in both Houses of Parliament. So, he is disqualified for being chosen as, and being, a member of the Lok Sabha. I find so and answer the third issue, as it now stands, in the affirmative.

49. Shri Chatterjee has raised in vain towards the close of his arguments, and that too for the first time during the trial, the new point about Shri Ashoke Krishna Dutt not being a person authorised in writing by the two petitioners to present the election petition, which he did, before the Election Commission. The learned Senior Standing Counsel has not taken the trouble of replying to this contention. But the minimum this contention deserves is a reply. And the reply is this. In the first place, I cannot allow Shri Chatterjee to spring a surprise at so late a stage. There has been no issue to that end, though each and every issue was fixed after a good deal of hearing, as Orders numbering 14 dated August 3, 1957, 15 dated August 5, 1957, and 19 dated August 19, 1957, go to show. In the second place, from the endorsement at the top of the election petition over the signature of Shri A. Krishnaswamy Aiyangar, Secretary, Election Commission, I may presume in safety—which I do—that this official act has been performed with regularity and that no irregularity vitiates it. Surely, there are no exceptional circumstances here which preclude me from drawing this presumption. In the third place, both the petitioners, Sadhukhan and Banerjee, PWs 11 and 12, speak of "certain papers", "many a paper" having been signed by them when they signed the election petition, though they cannot recall what exactly those papers are. Only because it is that, it cannot be said that non-existence of an authority in writing has been proved. Were such an issue there, this Tribunal would have directed the production of such an authority. Last but by no means the least, let it be assumed that there is no authority in writing by the two petitioners in favour of Shri Ashoke Krishna Dutt for presenting the election petition to the Election Commission. What, though that is so? Will this Tribunal dismiss, under section 90(3) of the Act, this election petition on the ground that it does not comply with the provisions of section 81? To say so is to push the matter to the verge of absurdity and ridicule. This Tribunal sees before it the two petitioners who are very much in earnest about their petition. They take steps after steps, engage Counsel, pledge their oaths and attend the hearing almost every day. Still, lack of authority in writing only for presentation of their petition will deprive them of the success which is otherwise due? That cannot be. This only illustrates that the words "authorised in writing in their behalf" in section 81(2)(a)(ii) of the Act are directory and not mandatory in their character, just as the words "in favour of the Secretary to the Election Commission", used in section 117, have been held by the Supreme Court in the recent case of Kamraj Nadar to be directory and not mandatory. So, the substituted respondents get little out of such a belated contention. I hold so.

50. In the result, I allow the petition and declare the election of the returned candidate, Shri Biren Roy, M.P., to be void.

Now about the costs which, including the pleaders' fees, shall be in the discretion of the Tribunal [section 120(1) of the Act]. Upon the whole of the facts and circumstances here, including PW 12, the petitioner Banerjee's evidence on August 8, 1958, of having expended so far Rs. 600 to Rs. 800, under section 99(1)(b), of the Act I fix the total amount of costs payable as Rs. 1200 and specify that the persons named below do pay to the petitioners, Banerjee and Sadhukhan, the sums shown against them:

Shri Biren Roy Rs. 600 (*vide* the last sentence in Order No. 61 dated June 2, 1958);

The substituted respondent, Shri N. C. Das Rs. 300;

The substituted respondents, Shri Brajagopal Das and Shri Devaprasad Roy ... Rs. 300.

I do not saddle the substituted respondents, Shri Sadhabindu Bandyopadhyaya and others, with costs. Because they have appeared only in name.

Dictated and corrected by me.

Sd. B. Mukherji,

Election Tribunal,

The 27th August, 1958.

(Sd.) B. MUKHERJI,
Election Tribunal
Calcutta,
(West Bengal),
Alipore.

[No. 82/489/57.]

By Order,

DIN DAYAL, Under Secy.